



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/171814

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on June 07, 2016, at Racine, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Fraud Specialist
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On November 30, 2015, the agency sent the Petitioner a manual Medicaid/BadgerCare Overpayment notice indicating that he was over the income limit and therefore, ineligible for benefits for the Period of June 1, 2015 through November 30, 2015. The notice further indicated that as a result, the Petitioner was overpaid \$18,364.10 in benefits. (Exhibit 2; Document C)

3. On December 1, 2015, the agency sent the Petitioner an automated Medical Assistance / BadgerCare / BadgerCare Plus overpayment notice, alleging the same overpayment of benefits, \$18,364.10 for the period of June 1, 2015 to November 30, 2015.
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 1, 2016. (Exhibit 1)

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning medical assistance must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, or as in this case, the recovery of an overpayment.

Here, the date of action was December 1, 2015, the date of the last overpayment notice issued by the agency. The Petitioner's appeal was filed on February 1, 2016, 62 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if I had jurisdiction to review the agency's determination, I would find that it acted correctly.

The Petitioner obtained new employment in March 2015. (Exhibit 2; document B) The Petitioner testified that he did not report his new employment, because he didn't know that he had to. However, in the notice issued to the Petitioner in January 2015, concerning the approval of his healthcare application, it told him that he needed to report when his income went over the limit by the 10th of the following month. (Exhibit 3) In addition, the application he filled out in December 2014 also told him that he needed to report changes in income. (Id.)

Effective April 1, 2014, an adult must have household income must be below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all taxable income must be counted. *BEH §16.1*

At the time in question, 100% of FPL for an assistance group size of one was \$980.83. *BEH §50.1*. Petitioner's income exceeded this income limit in April 2015; as such, he needed to report this change by May 10, 2015, which would have affected his benefits beginning in June 2015. *BEH §27.3 and §28.4.1*; See also Exhibit 2, document B. The Petitioner continued to be over the income limit through November 30, 2015. As such, the agency correctly determined he was overpaid benefits during those months.

The benefit amount is determined by the Total Benefits Paid by Medicaid Reports (§28.4.2), which in this case show a total overpayment of \$18,364.10. (See Exhibit 2, Document C) Thus, the agency correctly determined that the Petitioner was overpaid \$18,364.10 in BadgerCare+ benefits for the period of June 1, 2015 to November 30, 2015.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of June, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 15, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability